

AGENDA ITEM #11
September 13, 2002

To: Delta Protection Commission

From: Margit Aramburu, Executive Director

Subject: Proposed Memorandum of Understanding regarding Long Term Management of Staten Island, San Joaquin County
(For Public Hearing and Commission Action)

Background:

At the November 15, 2001 meeting, Mike Eaton, Director, Cosumnes and Delta Projects for The Nature Conservancy, presented the conditions of the grant of CALFED Ecosystem Restoration Funds and Flood Control Funds for acquisition of Staten Island. The legal documents had been signed and TNC had received the grant and purchased Staten Island in fee title.

The Commission expressed concerns about oversight of the implementation of the proposed joint wildlife-friendly agriculture and flood control project proposed for Staten Island. The Commission directed staff to pursue either the Commission becoming a signatory to the existing legal documents, or preparation of a separate document that would define an oversight role for the Delta Protection Commission for the proposed project.

The draft agreement was distributed and agendaized on the July meeting agenda; there were no Commissioner comments.

The Nature Conservancy reviewed the draft agreement and suggested minor Changes. Most of those changes have been incorporated into the revised draft.

Staff Recommendation:

Staff recommends the Commission adopt the revised draft agreement.

Draft 9-11-02

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE DELTA PROTECTION COMMISSION
AND
THE DEPARTMENT OF WATER RESOURCES
REGARDING STATEN ISLAND**

This Memorandum of Understanding (MOU) is entered into this _____ day of September, 2002, by and between the Delta Protection Commission (Commission) and the California Department of Water Resources (Department) to provide for review and comment by the Commission of proposed land use changes of the Staten Island property that may be considered as part of the North Delta Planning Process. Management of the Staten Island property is subject to the Proposition 13 Grant Agreement (Agreement) between the Department and The Nature Conservancy (Contractor) dated September 27, 2001, and the Conservation Easement Deed (Easement) granted to the Department by Contractor, and recorded in the Official Records of San Joaquin County on November 15, 2001, as Instrument Number 01187293, copies of which are attached to this MOU as Exhibits A and B. As used in this MOU, Contractor also includes any successor in interest to The Nature Conservancy.

Whereas, the Commission has a critical responsibility and statutory role in planning and land use decisions affecting the land in the Delta, including Staten Island, which lies within the primary zone of the Commission's jurisdiction in Northern San Joaquin County, and

Whereas, the North Delta Improvement Program (NDIP), a component of the implementation plan associated with the CALFED Bay-Delta Program, is being implemented by the Department and coordinated through the Commission, which will oversee a planning process involving multiple federal, state and local public agencies, together with interested private parties in the North Delta (the "North Delta Planning Process"), the ultimate goal of which is to develop and implement a final plan that will address flood management, ecosystem restoration and water supply reliability issues in the north delta region (the "North Delta Plan"),

Whereas, the Staten Island Agreement and Easement provide for the Commission's participation in the planning for the long-term management of Staten Island, which includes activities that are part of the NDIP, and

Whereas, the Department finds that continued management and use of Staten Island for wildlife-friendly agricultural purposes will preserve agricultural land, protect wildlife habitat, and protect this flood plain area from inappropriate or incompatible development,

consistent with the purposes of the Flood Protection Corridor Program (Water Code § 79035 et seq.), and

Whereas, the Easement requires that the Contractor use, manage, operate, and maintain the Staten Island property in a manner consistent with agricultural preservation, flood protection and ecosystem restoration purposes, and for protection of existing agricultural and habitat values of Staten Island, and

Whereas the Easement provides that the acquisition of the Staten Island property by the Contractor provides multiple and complementary benefits to the State of California for: (1) agricultural land preservation, including the economic viability of agricultural operations; (2) wildlife habitat protection; (3) protection of a flood plain area from potential inappropriate and incompatible development; and (4) potential role in future flood management and water management improvements (hereafter “Multiple and Complementary Benefits”), and

Whereas, the purposes of the Easement are to preserve and protect each of the Multiple and Complementary Benefits described above, and to encourage and promote wildlife-friendly agricultural practices on Staten Island, and

Whereas, both the Commission and the Department have a mutual interest in ensuring that the purposes and specific provisions of the Agreement and the Easement are carried out by the Contractor and the Department as intended by the parties;

Now therefore, the Commission and the Department agree as follows:

1. The Department will periodically report to the Commission on the status of the North Delta Improvement Program and the Staten Island property, including any proposed changes in agricultural operations, flood management, land uses, or ownership of the property that are recommended as a result of work conducted in the North Delta Planning Process. The reports will focus on the effect of any proposed changes on the Multiple and Complementary Benefits and any other substantive provisions in the Conservation Easement. As part of the reporting process, there will be an opportunity for comments from the public as well as from the Commission.

2. In addition to the periodic reports in paragraph 1, the Department will provide a report to the Commission and opportunity for public comment at these anticipated milestones:

- A. As part of the scoping process for EIR on the North Delta Improvements Project
- B. At the time the Draft EIR for the North Delta Improvements Project is circulated for public review.

- C. Prior to certification of the Final EIR for the North Delta Improvements Project.
- D. At other times as the parties may agree in the future.

3. If the Commission at any time believes that the management of the Staten Island property is not being carried out in accordance with the Easement and Agreement, the Commission may request a meeting with the Secretary for Resources (Secretary) to address its concerns. Whenever feasible, the Commission will first request a meeting with the Director of the Department or his designee and a representative of the Contractor to attempt to resolve the concerns of the Commission prior to meeting with the Secretary. However, a meeting with the Department and the Contractor is not required prior to the meeting with the Secretary.

4. The Contractor is currently conducting agricultural practices on the Staten Island property consistent with the Easement. As part of the ongoing management of the property, the Contractor is conducting baseline biological surveys and monitoring that will serve to inform CALFED Ecosystem Restoration Program planning that is being completed in coordination with North Delta Improvements. As required under the Easement, any material change in the use of Staten Island which is not expressly permitted in the Easement must be in accordance with a restoration plan that will be subject to public review, compliance with the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.), Commission review, and approval by the Department and the Resources Agency. The restoration plan may provide for certain changes in land use or management practices consistent with the Multiple and Complementary benefits, but until the restoration plan is approved, the Contractor may continue conducting agricultural practices in accordance with the Easement. Upon approval of the restoration plan, the Department will regularly provide information to the Commission on Contractor's compliance with the restoration plan, and will promptly provide notice to the Commission of any known land use changes or management practices not in compliance with the Easement and the restoration plan.

5. As provided in the Easement, prior to certain transfers of ownership of fee interest, the Contractor is required to obtain the written approval of the Department. Prior to approval of any such transfer, the Department will present the proposed transfer to the Commission for its review and comment at a public meeting.

6. It is the intent of the Department and the Commission that should the fee interest in the Staten Island property owned by the Contractor be transferred pursuant to Section 4.A of the Easement to a successor non-profit organization, the Commission or a member of the Commission will request to participate in the decision-making process for the management of the Staten Island property. It is the intent of the Department and the Commission that a member of the Commission be a member of the governing board of the successor owner, acting as the Commission's representative, in order to assist in management of Staten Island in furtherance of the Multiple and Complementary Benefits.

7. It is further the intent of the Department and the Commission that the commitments made by the Department and the Commission in this MOU shall continue in the event that Contractor transfers ownership of the Staten Island property. The Department acknowledges that under the terms of the Easement, the Department's obligations described in the Easement also continue in the event that Contractor transfers ownership of the Staten Island property.

This Memorandum of Understanding was approved by the Commission on _____, 2002, and by the Department on _____, 2002.

DELTA PROTECTION COMMISSION

Date: _____, 2002

By: _____

Name:

Title:

**CALIFORNIA DEPARTMENT OF
WATER RESOURCES**

Date: _____, 2002

By: _____

Name:

Title:

